

**United States Department of Labor
Employees' Compensation Appeals Board**

A.S., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
San Diego, CA, Employer**

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**Docket No. 16-1635
Issued: September 22, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 9, 2016 appellant filed a timely appeal from a May 24, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated March 18, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On appeal appellant contends that she submitted a report from a physician who opined that her carpal tunnel syndrome and *de Quervain's* syndrome of her right hand had been caused by her employment duties.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 4, 2015 appellant, then a 27-year-old health aid, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her right thumb, right hand, and right wrist. She noted that she had been diagnosed with tendinitis and carpal tunnel syndrome. Appellant indicated that she performed a lot of repetitive hand motions during her employment while completing blood draws, and these repetitive motions mainly involved her thumb and wrist.

In support of her claim, appellant submitted a statement indicating that she had worked as a phlebotomist at the hospital since May 2011, and she described her duties working with the vacutainer. She stated that on a busy day she could assist as many as 50 patients, and on a slow day about 10 patients. Appellant noted that her condition developed over the course of a few months.

Appellant also submitted a December 11, 2014 attending physician's report (Form CA-16) from Dr. Robert M. Maywood, a Board-certified orthopedic surgeon, wherein he indicated that appellant told him that she was drawing blood from a patient and felt a sharp pain while popping and pulling the tube off. Dr. Maywood diagnosed right wrist *de Quervain's* and carpal tunnel syndrome, and checked a box indicating the he believed that the condition was caused or aggravated by her employment activity. He restricted appellant to left-handed work only. In a work status form completed on the same date, Dr. Maywood indicated that appellant would be able to resume regular work on December 24, 2014. In a January 5, 2015 report, he returned appellant to modified duty effective January 5 through February 2, 2015.

On March 16 and 18, 2015 OWCP also received a duplicate copy of Dr. Maywood's December 11, 2014 report.

By decision dated March 18, 2015, OWCP denied appellant's claim. It found that the medical evidence of record did not establish that the diagnosed conditions were related to the established employment-related events.

On March 17, 2016 appellant requested reconsideration. She did not submit any new evidence with her reconsideration request.

By decision dated May 24, 2016, OWCP denied appellant's reconsideration request without conducting a merit review. It found that appellant's request for reconsideration neither raised substantive legal questions nor included relevant and pertinent new evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a

² Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

In a decision dated March 18, 2015, OWCP denied appellant's claim as she had not established causal relationship between her accepted factors of federal employment and her diagnosed medical condition. Appellant requested reconsideration on March 17, 2016.

OWCP reviewed appellant's request for reconsideration under the appropriate criteria for timely filed reconsideration petitions. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and she did not advance a relevant legal argument not previously considered by OWCP.

The Board also finds that appellant did not submit relevant and pertinent evidence not previously considered by OWCP. Appellant did not submit any evidence with her reconsideration request. Although the copy of Dr. Maywood's December 11, 2014 form report was received by OWCP on the same date as the last merit decision, this was a copy of a report that had been previously submitted. Evidence or arguments that are duplicative, cumulative, or repetitive in nature are insufficient to warrant reopening a claim for merit review.⁶

On appeal appellant contends that she submitted a report on reconsideration wherein the doctor indicated that her carpal tunnel syndrome and *de Quervain's* were related to her federal employment. However, as explained above, no new evidence was received with appellant's reconsideration request.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2016 is affirmed.

Issued: September 22, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board